IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.439 OF 2004
ALONG WITH
APPEAL (LODGING) NO.12 OF 2004
IN
SUMMONS FOR JUDGMENT NO.258 OF 2002
IN
SUMMARY SUIT NO.4467 OF 2001

Shubir Mukherjee ....Appellant

V/s.

Dilip Tolat ....Respondent

None for the Appellant.

None for the Respondent.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 11TH JANUARY, 2005.

P.C. :

. The Appellant and his advocate are absent.

2. We have gone through the papers including the order of the learned single Judge.

3. It appears that under the agreement dated 24th May, 1999, the Respondent agreed to advance to the Appellant a sum of Rs.25.00 lacs in two instalments for the purpose of financing the

production of a film which was to be undertaken by the Appellant. Under the agreement, an amount of Rs.12,50,000/- was to be advanced within 10 days from the date of execution and the balance of Rs.12,50,000/- was to be advanced one month before the excepted shooting schedule. It appears that the first instalment was paid within time schedule under the agreement but the Respondent failed to advance the second instalment.

4. The present suit is filed for recovery of the amount of Rs.12,50,000/- which is advanced by the first instalment.

5. Clause 3 of the agreement provides that if the Respondent committed default in advancing the second instalment of Rs.12,50,000/-, the Appellant would be entitled to forfeit Rs.2,50,000/- by way of liquidated damages and was to pay the balance sum of Rs.10,00,000/- within six months after the date of giving of the shooting schedule.

6. The learned single Judge has rightly observed that assuming that it was the Respondent who committed default, the Appellant after deducting Rs.2,50,000/- had to refund a sum of Rs.10,00,000/- within six

months from January, 2000. Therefore the Appellant had absolutely no defence for non-refund of sum of Rs.10,00,000/- after June, 2000. In the circumstances, the order of the learned single Judge granting conditional leave of depositing Rs.10,00,000/- cannot be faulted with. Appeal as well as Notice of Motion stand dismissed.